

2003

Ronald Kent Kunz and Roseann Jean Rockwell : Unknown

Utah Supreme Court

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IN THE UTAH SUPREME COURT

In re: RONALD KENT KUNZ,

Debtor,

and

In re: ROSEANN JEAN ROCKWELL,

Debtor.

Case No. 20030502-SC

Priority No. 11

Oral Argument Requested

OPENING BRIEF OF DEBTOR RONALD KENT KUNZ

**CERTIFIED ISSUE FROM JOINT ORDER OF THE UNITED STATES
BANKRUPTCY COURT FOR THE DISTRICT OF UTAH,
THE HONORABLE GLEN E. CLARK
AND WILLIAM T. THURMAN, PRESIDING**

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PARTIES

Debtor Ronald Kent Kunz, the debtor in Bankruptcy No. 02-40422 GEC, resided in Orem, Utah at the time of his bankruptcy filing. Mr. Kunz presently resides in the State of California.

Debtor Roseann Jean Rockwell, the debtor in Bankruptcy No. 02-42013 WTT, resides in Utah.

Steven W. Rupp, bankruptcy trustee of Ronald Kent Kunz, Bankruptcy No. 02-40422 GEC, resides in Utah and is a panel Chapter 7 bankruptcy trustee for the United States Bankruptcy Court for the District of Utah.

David L. Miller, bankruptcy trustee of Roseann Jean Rockwell, Bankruptcy No. 02-42013 WTT, resides in Utah and is a panel Chapter 7 bankruptcy trustee for the United States Bankruptcy Court for the District of Utah.

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this matter pursuant to Utah Code Ann. § 78-2-2(1) and Utah Rules of Appellate Procedure 41.

QUESTIONS PRESENTED AND STANDARD OF REVIEW

The following question was certified to this Court:

Question: Do funds transferred directly from one exempt account, as described in Utah Code Ann. § 78-23-5(1)(a)(x) to another exempt account within one year before a debtor files bankruptcy constitute “amounts contributed” within the meaning of Utah Code Ann. § 78-23-5(1)(b)(ii)?

Standard of Review: This is a question of law, to be determined *de novo*. See *Hogle v. Zinetics Med., Inc.*, 2002 UT 121, 63 P. 3d 80.

DETERMINATIVE STATUTES AND RULES

The interpretation of the following statutory provisions will be determinative of the issues on appeal:

Utah Code Ann. § 78-23-5(1)(a)(x)

(1) (a) An individual is entitled to exemption of the following property:

...

(x) except as provided in Subsection (1)(b), any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), or 414(e) of the United States Internal Revenue Code of 1986, as amended; and

Utah Code Ann. § 78-23-5(1)(b)

(b) The exemption granted by Subsection (1)(a)(x) does not apply to:

- . . .
(ii) amounts contributed or benefits accrued by or on behalf of a debtor within one year before the debtor files for bankruptcy.

STATEMENT OF THE CASE

A. Nature of the Case

The cases before the court are similar contested matters that arose separately in two individual Chapter 7 bankruptcy cases. Debtor Ronald Kent Kunz ("Kunz") is an individual debtor in a Chapter 7 bankruptcy case. Kunz had an Individual Retirement Account ("IRA") at the time of his bankruptcy filing. Kunz claimed an exemption pursuant to Utah Code Ann. § 78-23-5(1)(a)(x). Chapter 7 Trustee Stephen W. Rupp ("Rupp") objected to the claimed exemption, arguing that Kunz's action of changing custodians of the IRA funds through a rollover within one year prior to filing bankruptcy made the entire IRA non-exempt.

Roseann Jean Rockwell ("Rockwell") is an individual debtor in a separate Chapter 7 bankruptcy case. After being laid off by her employer, Rockwell withdrew approximately \$6,000 from her former employer's retirement plan and rolled it over into an IRA within one year prior to her filing for bankruptcy. David L. Miller ("Miller"), the Chapter 7 Trustee in the Rockwell bankruptcy case, filed a motion seeking to compel Rockwell to turnover the IRA to the bankruptcy estate.

B. Course of Proceedings

Kunz filed a petition for relief under Chapter 7 of the Bankruptcy Code on November 27, 2002. Rupp was subsequently appointed Chapter 7 trustee of the Kunz bankruptcy estate. In Schedule B of his Statements and Schedules, Kunz listed his IRA as exempt property under Utah Code Ann. § 78-23-5(1)(a)(x). Rupp filed an Objection to Exemption in which he argued that rolling over the IRA to a new custodian made all of the property in the IRA “amounts contributed within one year prior to filing bankruptcy,” and that the IRA was therefore not exempt under Utah Code Ann. § 78-23-5(1)(b)(ii). Mr. Kunz disputed Rupp’s assertions. Judge Clark of the bankruptcy court certified the question to this Court as part of the Joint Order Certifying Question to Utah State Supreme Court (“Joint Order”). The Joint Order also certified from Judge Thurman the same question with respect to a separate bankruptcy case, Roseann Jean Rockwell (“Rockwell”), Bankruptcy No. 02-42013 WTT. Mr. Kunz was not a party to the Rockwell bankruptcy and, accordingly, does not address the factual or procedural history of that case prior to the Joint Order.

C. Statement of Material Facts

The facts in the Kunz case are not complicated or in dispute¹:

Kunz filed a Chapter 7 bankruptcy case on November 27, 2002 (the “Petition Date”), Bankruptcy No. 02-40422 GEC. Stephen W. Rupp was appointed Chapter 7 trustee (“Trustee”) of the Kunz bankruptcy estate.

¹ Kunz’s recitation of the facts will focus on his IRA and bankruptcy rather than those of Ms. Rockwell.

Mr. Kunz owned an Individual Retirement Account (“IRA”) for which Merrill Lynch was the custodian for several years prior to the Petition Date. As of one year prior to the Petition Date, the balance of the IRA was approximately \$24,000.

In August 2002, within one year prior to the Petition Date, Mr. Kunz changed the custodian on his IRA from Merrill Lynch to Wachovia Securities (“Wachovia”) by rolling over the IRA account from Merrill Lynch into one for which Wachovia was the custodian.

The funds and securities in the IRA were directly transferred from Merrill Lynch as custodian to Wachovia as the new custodian.

Mr. Kunz did not deposit or transfer any new funds or securities into an IRA within one-year prior to the Petition Date. The only change in his IRA during the year prior to the Petition Date was that Mr. Kunz switched the account’s custodian from Merrill Lynch to Wachovia. The balance in Mr. Kunz’s IRA as of the Petition Date was \$22,826.00.

Mr. Kunz claimed an exemption for the IRA under Utah Code Ann. § 78-23-5(1)(a)(x). Rupp filed an objection to Mr. Kunz’s exemption of the IRA arguing that changing the custodian through a rollover constitutes a new “contribution” made within one-year prior to the Petition Date.

Kunz contested Rupp’s argument that rolling over the IRA from one custodian to another constituted a “contribution” that would result in the entire IRA losing its exempt status. The bankruptcy court certified the question to this Court, which accepted the certification.

SUMMARY OF ARGUMENT

The Utah Exemption Act protects IRAs from an individual's creditors. The only exception is that amounts contributed to an IRA within one-year prior to bankruptcy filing are not exempt. Changing the custodian of an IRA by rolling it over to a new custodian does not place any additional property outside the reach of creditors. The amount of property in the IRA remains the same. Any funds or securities in the IRA retain their same character as property that is part of an IRA under Section 408 of the Internal Revenue Code. It would be an absurd result if changing from one IRA custodian to another constituted an "amount[] contributed" to an IRA pursuant to § 78-23-5(1)(b)(ii) thereby destroying the exemption for the entire account.

ARGUMENT

I. THE PHRASE "AMOUNTS CONTRIBUTED" IN UTAH CODE ANN. § 78-23-5(1)(b)(ii) DOES NOT INCLUDE ROLLED OVER AMOUNTS THAT WERE ALREADY IN AN IRA AT THE BEGINNING OF THE TWELVE MONTH PERIOD.

A. The Language Clearly Does Not Include an IRA Change in Custodian.

While the phrase "amounts contributed" is not defined in the Utah Exemptions Act or anywhere in Title 78, Section 78-23-5 specifically refers to a number of provisions of the Internal Revenue Code for purposes of identifying which types of retirement plans or accounts are exempt. Therefore, it is appropriate to look to the Internal Revenue Code ("IRC") to seek a definition of "amounts contributed."

The IRC typically excludes rollover contributions from calculations dependent upon the amounts contributed to a retirement plan or IRA during a particular year. For

example, pursuant to 26 U.S.C. § 415(c), the calculation of allowable amounts of annual contributions to defined contribution plans does not include rollovers as amount contributed. Because the Utah Exemptions Act provides for specific exemptions by referring to the IRC, and because the IRC states that contributions to plans do not include rollovers as “amounts contributed” the only clear explanation is that the phrase “amounts contributed,” should not include rolled over amounts. Furthermore, as argued below, such a definition provides for the only logical result.

B. At the Very Least, the Phrase “Amounts Contributed” is Ambiguous and Should Be Interpreted So as to Avoid an Absurd Result.

Even if the court finds that the phrase “amounts contributed” does not clearly exclude amounts rolled over pursuant to a simple change in custodian, at the very least, Utah Code Ann. § 78-23-5(1)(b)(ii) (“the Statute”) is ambiguous as to the definition of “amounts contributed . . . by or on behalf of a debtor within one year before the debtor files for bankruptcy.” The question is whether the definition includes, in addition to amounts newly placed in an IRA during the one year period, amounts that were part of a pre-existing IRA rolled over to a new custodian as permitted by the Internal Revenue Code. Accordingly, the statute cannot be interpreted by reference to its language alone and, therefore, must be interpreted in light of policy considerations.

"A statute is ambiguous if it can be understood by reasonably well-informed persons to have different meanings." *Kearns Tribune Corp. v. Hornak*, 917 P.2d 79, 83 (Utah Ct. App. 1996); *Patterson v. Utah Co. Bd. of Adjustments*, 893 P.2d 602, 606 (Utah Ct. App. 1995). The Statute is certainly subject to differing interpretations. It is

reasonable to interpret “amounts contributed” as applying to newly contributed amounts that were not previously part of an IRA, and not as including a property already in an exempt IRA that is rolled over from one custodian to another which does not change the character of the rolled over amounts. The interpretation advanced by Rupp, is that “amounts contributed” also includes amounts that were already in a pre-existing IRA but which were rolled over to a new custodian. *See Wilcox v. CSX*, 2003 UT 21, ¶ 12, 70 P.3d 85 (stating that term “contribution” in statute was ambiguous because not uniformly defined in all contexts).

1. The Court Should Interpret the Phrase “Amounts Contributed” to Avoid an Absurd Result.

The inclusion of only new contributions, and not rollover amounts, is the only definition of “amounts contributed” that makes sense under the public policy surrounding the Utah Exemptions Act. “One of the cardinal principals of statutory construction is that the courts will look to the reason, spirit, and sense of the legislation, as indicated by the entire context and subject matter of the statute dealing with the subject.” *Longley v. Leucadia Fin. Corp.*, 2000 UT 69, ¶ 19, 9 P.3d 762 (citations omitted). When construing a statute, courts should seek to “give effect to the intent of the legislature in light of the purpose the statute was meant to achieve.” *Craftsman Builder’s Supply, Inc. v. Butler Mfg. Co.*, 1999 UT 18, ¶ 25, 974 P.2d 1194, *quoting Mariemont Corp. v. White City Water Improvement Dist.*, 958 P.2d 222, 224 (Utah 1998) (citations omitted). *See also* Utah Code Ann. § 68-3-2 (statutes “to be liberally construed with a view to effect the objects of the statutes and to promote justice”). “Further, we look with an eye toward the

construction that will achieve the best results in practical application, will avoid unacceptable consequences, and will be consistent with sound public policy." *Brixen & Christopher Architects, P.C. v. State*, 2001 UT App 210, ¶17, 29 P.3d 650, quoting *Derbidge v. Mutual Protective Ins. Co.*, 963 P.2d 788, 791 (Utah Ct. App. 1998).

2. The Utah Exemptions Act Is to Be Construed Liberally in Favor of the Debtors.

Utah courts have historically recognized that exemption statutes are to be construed liberally in favor of the debtors. *Russell M. Miller Co. v. Givan*, 7 Utah 2d 380, 325 P.2d 908, 909-910 (1958). See, e.g., *In re Petersen's Estate*, 97 Utah 324, 93 P.2d 445, 449 (1939) ("the homestead laws are to be liberally construed"); *Spangler v. Corless*, 61 Utah 88, 211 P. 692 (1922) (physician's automobile exempt under liberal construction of statute exempting "one horse, with vehicle and harness, or other equipments" used in visiting patients); *Lindquist v. Clayton*, 54 Utah 79, 179 P. 655, 656 (1919) ("When laws relating to chattel exemptions are not plain and there is occasion for construction, they should be liberally construed in favor of exemptions").

"The court's principal duty in interpreting statutes is to determine legislative intent, and the best evidence of legislative intent is the plain language of the statute." *Sullivan v. Scoular Grain Co. of Utah*, 453 P.2d 877, 879 (Utah 1993) (citing *Jensen v. Intermountain Health Care, Inc.*, 679 P.2d 903, 906 (Utah 1984)). The interpretation of the Statute urged by the Trustee ignores the context of the words. The Utah Exemptions Statute makes IRAs generally exempt. Section 78-23-5(1)(b)(ii), placed subsequent to the general exemption of IRAs set forth in Section 78-23-5(1)(a)(x), places a limitation

on what is otherwise a blanket exemption by excluding “amounts contributed” within one year prior to bankruptcy. This Court has consistently looked at factors other than the plain language of a statute if it is found to be "inoperable" or creates an absurd result when read literally. In *State v. Redd*, 1999 UT 108, ¶12, 992 P.2d 986, the Court stated: "Our clear preference is the reading that reflects sound public policy, as we presume that must be what the legislature intended. In other words, we interpret a statute to avoid absurd consequences." (citation omitted). See also *Andrus v. Allred*, 17 Utah 2d 106, 109, 404 P.2d 972, 974 (court interpreted statute contrary to plain language and noted that "reason and intention sometimes prevail over technically applied literalness."); *Murphy v. Crosland*, 886 P.2d 74, 80 (Utah Ct. App. 1994) ("[s]tatutory words are read literally, unless such a reading is unreasonably confused or inoperable.") (citation omitted); *Curtis v. Harmon Electronics, Inc.*, 575 P.2d 1044, 1046 (Utah 1978) ("A sound rule of statutory interpretation is that a statute is presumed not to be intended to produce absurd consequences and that where possible it will be given a reasonable and sensible construction"); *Patterson v. Utah Co. Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995); *Savage Indus. Inc. v. Utah State Tax Comm'n*, 811 P.2d 664, 670 (Utah 1991).

The facts of the Kunz case are similar to those of *In re Allen*, 228 B.R. 132 (Bankr. W.D. Pa. 1998). In *Allen*, the debtor had originally opened an IRA with Dean Witter. Within one year prior to the bankruptcy filing, the debtor transferred the IRA funds directly from Dean Witter to Janus Funds, Inc. A creditor objected to the debtor's exemption of the IRA, arguing that the rolled over funds were “amounts contributed “ to

a retirement plan or annuity within one year prior to bankruptcy, and were therefore not exempt under Pennsylvania's exemption statute. *Id.* at 137-138. The creditor in *Allen* relied on *In re Barshak*, 106 F.3d 501 (3rd Cir. 1997), in which the Third Circuit had interpreted a provision in Pennsylvania's former exemption statute that excluded "amounts contributed" to an IRA within one year from exemption as applying to funds the debtor had rolled over from a pension plan into an IRA.

The court in *Allen* distinguished *Barshak* holding that by simply changing the custodian of an IRA, the debtor did not make the IRA "amounts contributed" under the exemption statute because the character of the funds did not change. The funds were exempt under I.R.C. Section 408 prior to the rollover, and remained exempt under that same section after the rollover. The *Allen* court held that the IRA property rolled over from one custodian to another was not "amounts contributed" under Pennsylvania's similar exemption statute. *Id.* at 138-139.

Similarly, the custodian of the Kunz IRA account was transferred in or about August 2003 from Merrill Lynch to Wachovia Securities. The only change in the funds status was that they were held by a different brokerage as custodian. At no time did the funds lose their status as exempt under Section 408 of the Internal Revenue Code. The rollover of the existing IRA to a new custodian did not make the contents of the IRA "amounts contributed" within one year prior to bankruptcy. It would be an absurd result to say that money that was once exempt pursuant to the Utah Exemptions Statute, could lose its exempt status simply by a change of the custodian of those funds. In all other respects, there was absolutely no change in the status of the funds.

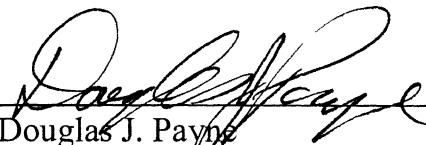
CONCLUSION

To answer the certified question with anything other than “no” would stand on its head the policy of exempting Individual Retirement Accounts, not to mention common sense. There is ample justification to hold that rolling over an IRA account does not strip it of protection. The only logical, workable interpretation of the amounts contributed term is that it does not apply to a mere change of custodian of an IRA where the property did not change character and no additional property was placed beyond the reach of creditors. Any other interpretation would cause the absurd result of an existing IRA that was not rolled over being exempt, but the property in an IRA that happened to be rolled over to a new brokerage as custodian within one-year prior to filing bankruptcy losing its exemption although no new amounts were added.

ADDENDUM

No Addendum is required.

DATED this 2nd day of October, 2003.



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CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of October, 2003, I caused a true and correct copy of the foregoing Opening Brief of Debtor Ronald Kent Kunz to be mailed, first-class postage prepaid, to the following:

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A handwritten signature in black ink, appearing to read "David L. Miller", is written over a horizontal line.